IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 16298 OF 2005

Date: 28.10.2005

BETWEEN:

Sri Vemula Ravinder

.... PETITIONER

And

1. The Panchayat Secretary, Gram Panchayat, Yadagirigutta Village and Mandal, Nalgonda District, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 16298 OF 2005

ORDER:

The petitioner is a resident of Yadagirigutta Village. Yadagirigutta is a famous and well-known pilgrimage center in these parts of Andhra Pradesh, which is visited by thousands of people every day. The petitioner appears to have obtained licence/permission from Yadagirigutta village Panchayat and started running a chicken selling center in the name and style of M/s. Sri Laxmi Narasimha Swamy Rythu Chicken Centre at Sriramnagar Colony, Yadagirigutta. The licence was valid up to 31.3.2005. On 28.2.2005 he made an application for renewal of licence for another one year from 1.4.2005. The first respondent by proceedings dated 16.3.2005 informed the petitioner that the application for renewal will be considered on condition of petitioner shifting the shop to market yard where Gram Panchayat constructed shops, and where all the chicken and mutton shops were situated. The petitioner sent a reply objecting the proposal to shift the shop. Therefore, on 2.4.2005 the first respondent issued notice informing that the licence would be renewed, provided, the

petitioner shifts his shop to market yard and that the petitioner is illegally running the business even after the licence period is expired. The petitioner is further directed to close the shop on the threat of seizure of the shop by the Gram Panchayat.

Aggrieved by the notice dated 2.4.2005 of the first respondent, the petitioner approached the Commissioner of Panchayat Raj, third respondent herein by filing a petition, purportedly under Section 264 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). He also moved an application for stay. It appears, the revision was returned by the third respondent on the ground that under Section 264 of the Act, the Government is the revisional authority. The petitioner filed a writ petition being W.P.No.8124 of 2005 on 11.4.2005 and on 13.4.2005 this Court disposed of the said writ petition directing the third respondent to consider the application for stay and pass appropriate orders in accordance with law. Thereafter, the third respondent issued notice to the petitioner and Gram Panchayat and by the impugned order dated 8.7.2005 dismissed the petition observing that the licence issued to the petitioner shall be cancelled and that he shall locate his shop in the shopping complex, but not on the main road. Assailing the said proceedings, the present writ petition is filed.

The learned counsel for the petitioner Sri A Rajsekhar Reddy submits that unless and until the Gram Panchayat issues a notification, the petitioner, who is running a chicken shop, is not required to obtain any licence from the Gram Panchayat and the licence obtained by the petitioner earlier does not in any manner compel him to seek licence. Secondly, he submits that the revisional authority relied on certain factors, which were beyond the scope of the original proceedings, and thirdly, he vehemently submits that if the petitioner is prohibited from carrying on business in selling chicken, it would violate the fundamental rights under Article 19(1)(g) of the Constitution of India. He placed reliance on the decisions of the Supreme Court in **Commissioner of Central Excise, Calcutta v. Emakay Investments Ltd., Saci Allied Products Ltd., v. Commissioner of Central Excise, Meerut**, and also on the decisions of this Court in **S. Dastagir v. Executive Officer, Udayagiri Gram Panchayat, Udayagiri, Nellore and D. Srinivasa Raju v. District Forest Officer, West Godavari, Eluru**.

The learned Standing Counsel for Yadagirigutta Gram Panchayat, Sri R. Prem Sagar, submits that the Gram Panchayat has powers to require every person to obtain a licence to carry on certain trades as per Section 118 of the Act read with Rules made in G.O.Ms.No.77 dated 13.3.2004. He would further submits that the petitioner's shop is situated on the main road leading to Sri Narasimha Swamy Temple, and the same is causing inconvenience to the local people as well as pilgrims visiting the temple. It is his contention that the Gram Panchayat has not infringed the fundamental right of the petitioner under Article 19(1)(g) of the Constitution of India, but only directed him to locate his shop in Gram Panchayat market yard where all other shops were situated. According to the learned counsel, it is a reasonable restriction under Article 19(6) of the Constitution of India. He placed reliance on **Municipal Corporation, Ahmedabad v. Jan Mohammed, Krishnan Kakkanth v. Government of Kerala,** and also on the decisions of this Court in **M. Satalin v. The Chair Person, Bhimavaram Municipal Council and A.P. Gunnies Merchants Association v. The Government of A.P.** in support of his contention. The learned Assistant Government Pleader Sri K.V. Seshagiri Rao, while adopting the submissions made by the learned Standing Counsel, brought to the notice of this Court that under

Section 264 of the Act, the revisional authority is Government of Andhra Pradesh and that there is no delegation of powers of revision to the Commissioner.

Section 264 of the Act confers suo motu powers on the Government to revise any order passed by the Gram Panchayat, Mandal Parishad or a Zilla Parishad or of its standing committees or of any authority, or officer of such authority. Under sub-section (7) of Section 249 against every order passed by the District Collector removing the Sarpanch under Section 249(1), or the orders passed by the District Collector under sub-section (4) removing a member of Gram Panchayat, an appeal is provided to the Government. Section 260 of the Act enables the Government to delegate its power under the Act and authorise any person to exercise powers so delegated. The Government issued orders in G.O.Ms.No.693 Panchayat Raj (Pts-II) Department dated 28.10.1995 delegating its power under sub-section (7) of Section 249 of the Act to the Commissioner Panchayat Raj. However, there is no such delegation of powers to the Commissioner to exercise its power under Section 264 of the Act.

The impugned order of the third respondent is passed under Section 264 of the Act treating it to be an appeal. Ex facie, the Commissioner is not conferred with any power to entertain an appeal under Section 264 or under Section 128 (1) or 128(2) of the Act. In either case the revisional authority is only the Government, and insofar as revisional powers are concerned, as concluded above, the Government has not delegated the powers to the Commissioner of Panchayat Raj Department. The learned Assistant Government Pleader however, submits that the petitioner filed W.P.No.8124 of 2005, which was disposed of by this Court on 13.4.2005 directing the Commissioner to pass appropriate orders in accordance with law and therefore, the impugned order is passed. When this Court disposed of the writ petition observing that the appeal/petition of the petitioner shall be disposed of in accordance with law, this Court never intended that the revisional powers of the Government under Section 264 should be exercised by the Commissioner of Panchayat Raj, who inherently lacks such jurisdiction. Therefore, the impugned order is wholly unsustainable, as the same is passed without power or authority. In view of this, this Court is not inclined to go into the merits of the case at this stage.

Accordingly, the Writ Petition is disposed of. The impugned order passed by the third respondent is set aside. The third respondent, namely, the Commissioner of Panchayat Raj, Government of A.P., is directed to submit the revision petition/appeal petition submitted by the petitioner on 8.4.2005 against the orders/notice dated 2.4.2005 issued by the first respondent forthwith to the Government of A.P. within a week from today. After receiving the papers the Government is directed to dispose of the said revision petition in accordance with law, duly considering the effect of Section 118 of the Act and the Rules made thereunder, as well as Section 119 of the Act, within a period of three weeks from the date of receipt of revision petition from the office of the Commissioner. Till then, the petitioner shall not be prohibited from opening the chicken shop everyday up to 10 a.m. in the morning and 5 p.m. to 7 p.m. in the evening.

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(**V.V.S. RAO, J.)**

28th October, 2005

Note: Issue C.C. today.

(By order) / Js.